

REMARKS

Claim Disposition

Claims 1-17, 28, 29, and 36-53 were pending in the application. Claims 1, 2, 37, 38, and 39 are cancelled, and claims 3, 4, 17, 29, 36, and 41-53 are amended, without disclaimer or prejudice as more fully explained below. Claims 3-17, 28, 29, 36, and 40-53 will be pending in the application upon entry of the present amendment. Applicant reserves the right to file continuing applications or take any other such appropriate measure to prosecute the subject matter deleted by cancellation or amendment.

The Objection to the Disclosure Should be Withdrawn

Page 2 of the Office Action indicates that the disclosure is objected to, for recitation of a hyperlink. The specification is amended to delete this recitation. Accordingly, this objection to the disclosure should be withdrawn.

The Rejections Under 35 U.S.C. §102(b) Should be Withdrawn

Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being anticipated by Hollis et al. (US Patent 5,538,885), and Claim 36 was rejected under 35 U.S.C. §102(b) as being anticipated by Felgner et al. (PNAS, Vol. 84, 1987, pp 7413-7417). To facilitate prosecution, claims 1, and 2 are cancelled and 36 is amended as set forth above. Support for this amendment of claim 36 can be found throughout the specification and the original claims. See for example, original claims 36 and 39. The structural limitations recited in original claim 39 are now recited in claim 36. Thus, this rejection of claim 36 is obviated by amendment.

Accordingly, this rejection of the claims under 35 U.S.C. §102(b) should be withdrawn.

The Rejections Under 35 U.S.C. §103(a) Should be Withdrawn

Claims 1 and 4 were rejected under 35 U.S.C. §103(a) as being obvious over Cole et al. (4,226,856). First, with respect to claim 1, this claim is cancelled as more fully explained above. Accordingly, this rejection of claim 1 is obviated. This rejection of claim 4 is traversed.

In light of the cancellation of claim 1, claim 4 is now dependent on claim 3. As a basis for this rejection of claim 4, the Office Action indicates that Cole teaches bouvardin, as well as methods of using it therapeutically, but not the collection of bouvardin in a container with written instructions for its use, the actual content of the printed matter notwithstanding. The Office Action further indicates that It

would have been obvious to have packaged instructions for use of a pharmaceutical, as such is and was routinely (and necessarily) done in the art, and such a combination would be expected to function. The instructions for use are not functional in the invention, i.e., do not interact structurally with the container and/or bouvardin. As such, the actual content of the printed matter carries not patentable weight, and thus does not distinguish over the recited prior art.

In contrast, as acknowledged on page 4 of the Office Action, “claim 4 specifies...that said gene transfer compound is bouvardin” (emphasis added). In other words, claim 4, is clearly directed to a kit for activating gene transfer and recites bouvardin as a gene transfer compound. The reference of Cole et al. is completely deficient with respect to teaching bouvardin as a gene transfer compound; and the Office Action does not provide any reasoning that indicates why the reference to methods of using bouvardin therapeutically as referred to in Cole et al., would motivate the ordinarily skilled artisan to envision bouvardin as a gene transfer compound as recited in claim 4, let alone with any reasonable expectation of success. Put another way, Applicant submits that clearly, every compound known to be associated with a therapeutic use cannot be reasonably expected to be a successful activator of gene transfer. Therefore, Applicants submit that the Office Action has not provided a *prima facie* case of obviousness for regarding claim 4. Accordingly, Applicants respectfully request that this rejection of the claims under 35 U.S.C. §103(a) should be withdrawn.

The Rejections Under 35 U.S.C. §112, second paragraph, Should be Withdrawn

Claims 3, 28, and 39, and dependent claims 5-17, 37, 38, and 40-53 were rejected under 35 U.S.C. §112, second paragraph, for indefiniteness, the Office Action essentially indicating that it is not clear which structures are designated by the Formula designations “(IV)” and “(VI)”, that both designations appear to designate the same structure, and one of these may be redundant. This rejection is traversed, and Applicants respectfully provide the explanation immediately below..

There are seven structures recited in the claims under consideration. Each roman numeral designation simply designates the structure to the left of the numeral. In this manner, the designation “(IV)” refers to the structure “ $R^3-AsO_3H_2$ ”. Consistent with this explanation, Applicant also respectfully refers to the corresponding publication of the present application, U.S. patent application publication 2006/0233754; for example, claim 3, column 13 of said publication. Accordingly, Applicants submit that an Applicant’s amendment is not necessary to merely reset the spacing. However, if the examiner is of the position that such an amendment is still necessary, he is invited to notify the applicant.

Claims 17, 29, and 53 were rejected under 35 U.S.C. §112, second paragraph, for the recitation of the NSC accession numbers therein. Applicants have amended the claims to refer to the compounds

recited in the claims by chemical name. As support for this amendment, Applicant provides the records contained in the Appendix submitted herewith. Based on the provided records in the Appendix, it is clear that each NSC number designation under consideration referred to the same chemical structure on February 25, 2002 (prior to the filing date of the present application), as it refers to at the present (database last accessed as of the day of this submission).

In light of all of the above, Applicant submits that this rejection of the claims under consideration has been obviated and should be withdrawn. In the event that the Examiner feels that a telephone interview would facilitate the prosecution of this application, he is invited to contact the undersigned at the telephone number below.

In view of the above Amendments and Remarks, applicant believes the pending application is in condition for allowance, and such allowance is respectfully solicited.

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Respectfully submitted,

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